

Alternative Licensure General Information Sheet and FAQ

What is Alternative Licensure?

“Alternative licensure” refers to regulatory systems designed to license professionals other than lawyers to practice law. Existing forms of alternative licensure enable an individual to obtain a license to provide limited-scope legal services to the public without the supervision of a lawyer.

Historically, lawyers were the only professionals in the United States licensed to practice law, with each state, district, or territory responsible for the licensing and regulation of lawyers within its borders. With limited exceptions, to be generally licensed to practice law an individual was required to have a law degree, pass a bar exam, establish a requisite degree of character and fitness, and be generally admitted to practice by the highest court of the admitting jurisdiction. The practice of law by an individual other than a lawyer could subject that individual to criminal and other penalties and sanctions for the unauthorized practice of law.

In the last decade, a number of U.S. jurisdictions have considered and in some cases implemented alternative approaches to full lawyer licensure, thereby expanding the classes of state-licensed individuals authorized to provide legal services to the public. In some jurisdictions it is considered an important component of alternative licensure initiatives that responsibility for all forms of licensure of legal professionals be retained by the highest court in that jurisdiction as an exercise of its inherent and/or constitutional authority for the regulation of the practice of law.

Why license individuals other than lawyers to provide legal services?

The primary motivation for alternative licensure programs is to improve access to justice. For decades, studies have shown that the cost of legal services is out of reach for most middle- and low-income Americans, even when facing a serious legal problem. It is increasingly recognized that the traditional approaches to the nationwide access-to-justice dilemma – legal aid funding and pro bono service – will never wholly solve the problem. Left with few affordable alternatives, the middle class and poor frequently turn to unregulated and/or unqualified providers, which may exacerbate rather than remedy a legal problem, or do without needed legal representation.

Relatedly, the rapidly evolving legal market, driven by advances in technology and computerization, has changed the way the consuming public accesses legal services. Consumers today expect to obtain legal documents and advice quickly and conveniently on the internet, in the same way they access other forms of information and services. With more self-help and no- or low-cost options available to meet consumer need, the legal profession needs to adapt the way it participates in the legal services market. Alternative licensees can deliver affordable legal services to consumers when individualized advice and counsel is needed.

Are there various forms of Alternative Licensure?

In 2012, the Washington State Supreme Court authorized a program to license Limited License Legal Technicians (adopting what has become known as the “LLLT rule”), and began licensing LLLTs in 2015. Like lawyers, LLLTs are authorized to give legal advice, but LLLTs may give advice only in certain family law matters and only within the limited scope of the LLLT license described in applicable court rules and regulations. Unlike lawyers, LLLTs are not authorized to represent a client in court or other adjudicative or dispute-resolution proceedings, nor are LLLTs authorized to negotiate a client’s legal rights or responsibilities.

In 1983, with less fanfare than the LLLT rule, the Washington State Supreme Court authorized the creation of Limited Practice Officers, to authorize and license laypersons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions.

Other states have implemented programs akin to alternative licensure, such as the establishment of certified document preparers in Arizona and Court Navigators in New York, although these approaches involve enabling individuals to provide legal information and/or non-legal litigant support rather than full-fledged legal advice under the authority of a license.

Are jurisdictions other than Washington considering Alternative Licensure?

Yes. Information about ongoing alternative-licensure activity in the U.S. and internationally is compiled in a companion document titled “Jurisdictions’ Activity on Alternative Licensed Legal Professionals.”

What other legal organizations are investigating Alternative Licensure?

In 2014, ABA President William Hubbard formed the Commission on the Future of the Delivery of Legal Services. Among the Commission’s working groups is the Regulatory Opportunities Working Group, which includes alternative licensure in its areas of study. The Working Group will recommend regulatory innovations that improve the delivery of, and the public’s access to, competent and affordable legal services. See http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html

Where can I find more information about Alternative Licensure, including Washington’s LLLT Program?

Information from law reviews, journals, newspapers, and other print sources is compiled in a companion document titled “LLLT Resource Bibliography.”

For a jurisdiction considering studying, adopting, and/or implementing an Alternative Licensure program, what issues and questions are likely to arise that would benefit from in-depth study or advance planning?

- Who should be involved in the process (e.g., supreme court, statewide bar association, specialty bar associations, existing regulatory boards, lawyer licensing and discipline authorities, local law schools, local colleges/universities/community colleges)?
- Who will be the primary regulator? Will the program require creation of a new regulatory board or entity? Will there be co-regulation among a new regulatory entity and existing lawyer regulators?
- What regulatory model is appropriate? Is it akin or parallel to the existing lawyer regulatory model (e.g., will there be rules of professional conduct, a bar exam, etc.)? What aspects would have to be different?
- What are the educational/experiential requirements that will be imposed on the new type of licensee?
- What institutions or entities will deliver the curriculum to satisfy these educational/experiential requirements? Will the institutions or entities delivering the curriculum need to be accredited by an existing accrediting body for legal or higher education (e.g., must the required education occur at an ABA-approved law school or paralegal education program)?
- Will there be a financial responsibility requirement?
- What is the cost of implementation of such a program, and who will bear that cost?
- What is the evidence that there is an access-to-justice problem in my jurisdiction? How would the program being considered help address the access-to-justice problem?
- Is the structure of the program such that consumers would use the alternative licensees? Will the services of alternative licensees be affordable?
- How will this program affect the market for the services of lawyers? Will lawyers and the alternative licensees be able to work together? Form and co-own businesses?
- Who in other jurisdictions can I contact to get more information? What support or assistance can they provide?